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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/881,856

06/13/2001

Susan M. Duncan

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8532

25315

7590

11/17/2005

BLACK LOWE & GRAHAM, PLLC

701 FIFTH AVENUE

SUITE 4800

SEATTLE, WA 98104

EXAMINER

REIS, TRAVIS M

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/881,856

Applicant(s)

DUNCAN, SUSAN M.

Examiner

Travis M. Reis

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-6,8-22,25,26 and 28-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-22,25,26 and 28-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 14, 19-22, 25, 28, 33-35, 37, & 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bobrick in view of Marshall (U.S. Patent 1625041).

Bobrick discloses a design tool, system & method (see attachment) for use in association with design plans having hallways, doorways, stairways, rooms and other spaces of a known scale, for functional and space planning in the fields of architecture, interior design, and construction of residential and commercial structures (col. 1 lines 29-30 through col. 2 lines 1-9), comprising a two dimensional icon figure member (A) shaped as a human (B) seated in a wheelchair (C) with at least two wheels (D) supporting the chair of the icon figure member, the member having a base (E) engagable with the design plans (see attachment); the icon figure member attached to said base, said base equal to or greater than the diameter of the icon figure member (see attachment), and scaled (F) to indicate a turning radius to imitate & indicate the turning radius of a wheelchair support device (Figure 2) along the hallways, doorways, stairways, rooms and other spaces of the design plan to visually illustrate the feasibility of movement along the noted paths in light of the size and turning radius of the represented person. *(Numerals A-G have been added by the Examiner).*

Bobrick does not disclose the icon figure member is a three-dimensional figure with a three-dimensional base extending downwardly and outwardly from said three-dimensional figure.

Marshall discloses a device including a chart device & means which utilize three-dimensional figures including various types of persons (30-32, 36) (Figures 3, 6, & 11) with three-dimensional bases extending downwardly and outwardly from said persons (X, see below)



(page 2 lines 67-69). These figures are scaled to represent the proportionate relationship between objects (i.e. people, cars, etc.) within the chart device. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to shape the icon figure member figure (A), shaped as a wheelchair or a human seated in a wheelchair with the peripheral edge shaped to coincide with a scaled space envelope desired for movement of a wheelchair, as disclosed by Bobrick into a three dimensional figure, with the turning radius (G) disclosed by Bobrick becoming a base extending downwardly and outwardly, as taught by the various three dimensional persons set upon bases disclosed by Marshall in order that the height of fixtures in the design plan are properly considered, the need for which is demonstrated in Figure 1 of Bobrick, and since Marshall already suggests using 3D figures to convey information to a user.

3. Claims 3-6, 8, 9, 11-13, 15, 16, 18, 22, 26, 31, 32, & 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bobrick & Marshall as applied to claims 1, 14, 19-22, 25, 28, 31-35, 37, & 38 above and further in view of Stansbury (U.S. Patent 4276695).

With reference to claims 3, 8, 9, 11, 15, 16, 26, 31, & 32, Bobrick & Marshall disclose all of the instant claimed invention as stated above in the rejection of claims 1, 14, 19-22, 25, 28, 33-35, 37, & 38 but do not disclose a wand member with a first and second end extending from the icon figure member at any angle relative to the perpendicular, from an opening in the icon figure member wherein a first end of the wand member is maintained within the opening by

frictional contact or a snap lock combination.

Stansbury discloses a roller measure device (30) with an opening (101) with a wand/handle member (44) wherein the wand/handle member is held within the opening by frictional contact in order to push the device around easily and move it forward along a surface (Abstract; col. 6 lines 48-50) (Figure 5). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the opening and wand/handle member disclosed by Stansbury to the icon figure member disclosed by Bobrick & Marshall in order to pick up, place, turn, and move the icon figure member forward along the surface of the plans more easily and with better control by the act of gripping the wand/handle member instead of reaching and gripping the icon figure member itself.

With reference to claims 11 & 18, Bobrick & Marshall do not disclose first and second ridges along the opening and wand/handle member respectively to provide a snap lock combination.

Stansbury also discloses other types of connection means including snap lock combinations between two ridges (172, 173) on two pieces (52) of the wand/handle member (Figure 5).

Stansbury discloses other types of connection means including a connection means between two ridges (172, 173) on two pieces (52) of the wand/handle member that form a snap lock combination when placed together (Figure 9). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the ridge member disclosed by Stansbury to the opening and end of the wand/handle member disclosed by Bobrick & Marshall in order to have a snap lock combination, in order that the handle is securely connected to the design tool and since a snap lock combination is an common alternative means of connection.

Art Unit: 2859

4. Claims 10 & 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bobrick, Marshall, & Stansbury as applied to claims 3-6, 8, 9, 11-13, 15, 16, 18, 22, 26, 31, 32, & 36 above, and further in view of Riehle (U.S. Patent 4250642).

Bobrick, Marshall, & Stansbury disclose all of the instant claimed invention as stated above in the rejection of claims 3-6, 8, 9, 11-13, 15, 16, 18, 22, 26, 31, 32 & 36 but do not disclose a metal plate located in the opening, and a magnet in the end of the wand/handle member, thereby providing a plate-magnet combination.

Riehle discloses a planning aid and that metal plates and magnetic planning elements connecting to said plates are common in the art (col. 1 lines 30-34). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the metal plate and magnet disclosed by Riehle to the design tool disclosed by Bobrick, Marshall, & Stansbury in order to provide a strong, but easily releasable connection means, and since a magnet and metal plate combination is an common alternative means of connection.

### ***Response to Arguments***

5. In response to applicant's arguments that none of the references include a downwardly and outwardly extending three dimensional base with a peripheral edge defining a space envelope; these arguments have been fully considered but they are not persuasive since Marshal discloses a rectangular base which extends outwardly from the figure with a peripheral edge which extends downward, said base defining a space envelope the figure inhabits, to the scale defined by the chart the figure is placed upon, as detailed above in paragraph 2.

6. In response to applicant's argument that there is no suggestion to combine the references of Stansbury with Marshall & Bobrick, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either

Art Unit: 2859

in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the handle disclosed by Stanbury move a device forward along a surface, the teaching of which would be an advantageous feature to the small figures disclosed by Bobrick & Marshall. Furthermore, with such a handle would provide an easier, more controllable, means of turning the figure along its axis than merely reaching and gripping the figure to turn said figure.

7. In response to applicant's arguments that the Duncan Declaration confirms that Bobrick does not disclose wheelchair maneuverability and planning; these arguments have been fully considered but they are not persuasive since Duncan makes the statement that the overlay is to "assist with approximating wheelchair maneuverability and planning" (See lines 3-4 in paragraph 4 of the Duncan Declaration made January 23, 2004).

8. In response to applicant's arguments that the Duncan Declarations explain why static representations cannot be used to show actual maneuverability; these arguments have been fully considered but they are not persuasive since Duncan makes the statement that "Using the Bobrick template as an overlay requires manual manipulation of the template" & "to stimulate visual movement of the overlap requires continuous hand manipulation". Since the template can be manipulated manually by Duncan's admission, it follows that such manipulations can be used to show actual maneuverability. Despite the fact that "fingers obscure the visual movement being demonstrated", the visual movement takes place.

9. In response to applicant's arguments that the Declarations provide proper evidence showing the long-felt need; these arguments have been fully considered but they are not persuasive since none of the Declarations provide any objective evidence of the date that the need arose; objective evidence of the date of the articulation of the problem; objective evidence

Art Unit: 2859

that the problem was a persistent need in the industry; objective evidence that prior attempts in the industry by others did not satisfy the need; or objective evidence that the need was satisfied by applicant's invention. The declarations only provide statements without any evidence supporting these statements.

10. In response to applicant's arguments that the Duncan Declarations provide proper evidence showing commercial success; these arguments have been fully considered but they are not persuasive since no objective evidence is provided to support Declarant's statement that the "commercial success" was not due to heavy promotion or shift in advertising or that the number of unit sales is considered to be significant given the industry. The declarations only provide statements without any evidence supporting these statements.

11. In response to applicant's arguments that the declarations show that the objective evidence derives from the claimed invention; these arguments have been fully considered but they are not persuasive since no objective evidence has been provided supporting Declarant's statements regarding "long-felt need" or "commercial success". The declarations only provide statements without any evidence supporting these statements.

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis M. Reis whose telephone number is (571) 272-2249. The examiner can normally be reached on 8--5 M--F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications



Art Unit: 2859

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Travis M Reis  
Examiner  
Art Unit 2859



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tmr  
November 10, 2005